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Supreme Court of the United States

October Term, 1955

No. 418

WAITERS & WAITRESSES UNION, LOCAL 241, AFL, an unincorporated association; RAY TURCK and MARIE DAVIS, as President and Secretary-Treasurer, respectively, and on behalf of the WAITERS & WAITRESSES UNION, and as members of LOCAL JOINT EXECUTIVE BOARD, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL, an unincorporated association, and others having similar interests,

Petitioners,

vs.

SANSON HOUSE RESTAURANT, INC., a Pennsylvania Corp., ESTELLA M. ARGO, in her own behalf and on the behalf of others having similar interests,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1955. No.

WAITERS & WAITRESSES UNION, LOCAL 301, AFL, an unincorporated association; RAY TURCHI and HARRY DAVIS, as President and Business Agent, respectively, and as agents of the WAITERS & WAITRESSES UNION, and as individuals; LOCAL JOINT EXECUTIVE BOARD, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL, an unincorporated association, and others having similar interests,

Petitioners,

vs.

SANSOM HOUSE ENTERPRISES, INC., a Pennsylvania Corp., ESTELLA M. ABDO, in her own behalf and on the behalf of others having similar interests,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

The petitioners, Waiters & Waitresses Union, Local 301, Ray Turchi, Harry Davis, and Local Joint Executive Board, Hotel and Restaurant Employees and Bartenders International Union, AFL, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above entitled case on June 27, 1955.

OPINIONS BELOW.

The opinion of the Chancellor (R. 457a-472a) and the opinion of the trial court en banc (R. 487a) are unreported. The opinion of the Supreme Court of Pennsylvania (App. 19-25) is reported in 382 Pa. 476, 115 A. 2d 746 (1955). The dissenting opinion (App. 25-27) is reported in 382 Pa. at page 484 and in 115 A. 2d at page 750.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania was entered on June 27, 1955. A timely petition for rehearing was denied on July 26, 1955.

Jurisdiction of this Court is invoked under Section 1257 (3) of the Judicial Code (28 U. S. C. A., Section 1257 (3)), with respect to a final judgment rendered by the highest court of the state in which a decision could be had where a right is claimed under the Constitution of the United States.

QUESTION PRESENTED.

Whether a state court may enjoin peaceful organizational picketing and thereby deprive such picketing of the protection to which it is entitled under the First and Fourteenth Amendments to the Constitution of the United States simply by ignoring the clear organizational nature of the picketing as set out in the Record and as found by the trial court and by attributing to such picketing an illegal coercive purpose unsubstantiated by the Record.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The First Amendment to the Constitution of the United States provides: "Congress shall make no law * * * abridging freedom of speech. * * *"

The Fourteenth Amendment to the Constitution of the United States provides: "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law. * * *"

The Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, as amended, 43 Pa. Stat. Ann. (Purdons), Sec. 211.1 et seq., provides:

> "Section (1)—It shall be an unfair labor practice for an employer
>
> "(a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act.
>
> "(c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization * * *
>
> "Section (2): It shall be an unfair labor practice for a labor organization, or any officer or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert—
>
> "(c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining."

STATEMENT OF THE CASE.

In March of 1952 the petitioners were in the midst of a campaign to organize the employees of the respondent corporation (R. 218a, 414a). This campaign was meeting with considerable success (R. 418a). In an effort to disrupt these organizational efforts Jacob Blum, an officer of the respondent corporation, on several occasions expressed to the employees his violent anti-union sentiments. Using vulgar and obscene language, he frequently threatened the employees with loss of employment if they should join the union. See *Pennsylvania Labor Relations Board v. Sansom House Enterprises, Inc.*, 378 Pa. 385, 389 (1954). Subsequently, on March 15, 1952, the respondent discharged a waitress, Mary Jane Greenwood, who had signed up with the Union and who had been most active in soliciting other employees to join (R. 218a).

Mrs. Greenwood reported her discharge to Ray Turchi, the President of the Waiters and Waitresses Union, whereupon he made several unsuccessful attempts to reach Mr. Blum by telephone and telegraph (R. 219a-220a). After these repeated messages had failed to elicit a reply from Mr. Blum, Mr. Turchi paid him a personal visit at the Sansom House on March 26, 1952, in company with Harry Davis, another Union official. According to the testimony of Turchi and Davis, Turchi informed Blum that he would like to discuss the discharge of Mary Jane Greenwood. In response Blum flew into a rage and cursed Turchi. Turchi then requested the reinstatement of Mrs. Greenwood, whereupon Blum cursed the union and terminated the conversation (R. 220a-222a, 271a-272a). Immediately following this conversation the Union called a strike at the Sansom House and commenced picketing the restaurant in furtherance of its organizational campaign and in protest against the anti-union conduct of the respondent (R. 222a, 273a).

At this time also the petitioners filed charges of unfair labor practices against the respondent, alleging two counts: (1) interference with its employees' exercise of their right to organize in violation of Section 6 (1) (a) of the Pennsylvania Labor Relations Act (Act of June 1, 1937, P. L. 1168, as amended, 43 P. S., Sec. 211.1 et seq.) and (2) discrimination in firing one Mary Jane Greenwood for union activity in violation of Section 6(1)(c) of the Act. The Pennsylvania Labor Relations Board found Sansom House Enterprises, Inc., guilty on both counts (R. 432a, 435a-437a). On appeal to the Court of Common Pleas No. 6 of Philadelphia County the finding of interference was affirmed. The finding of a discriminatory discharge was reversed, but the judge emphasized that "these charges were filed in good faith and had substance" (R. 465a).[1]

On December 2, 1953, the respondent corporation filed a bill in equity (R. 3a-20a) seeking to enjoin the picketing of the Sansom House on the ground that its purpose was to compel the employer to coerce its employees into joining the union in violation of the Pennsylvania Labor Relations Act (R. 12a). In its answer of January 19, 1954 (R. 39a-51a) the Union inter alia denied that the picketing was for such purpose and averred that the picketing was for the following purposes:

> "(a) to protest the aforementioned violations of the Pennsylvania Labor Relations Act by the plaintiff,
>
> (b) to protest the low wages, long hours of work and unsatisfactory working conditions of plaintiff's employees,
>
> (c) to publicize the aforementioned true facts and the fact that plaintiff's restaurant was a non-union restaurant, and

---

[1] The Supreme Court of Pennsylvania ultimately affirmed the decision of the lower court that the discharge had not been discriminatory. **Pennsylvania Labor Relations Board v. Sansom House Enterprises, Inc.**, 378 Pa. 385 (1954).

(d) to organize the remainder of plaintiff's employees" (R. 45a-46a).

The Union further averred:

> "* * * that the strike and the picketing in conjunction therewith are constitutionally protected activities, being an exercise of the defendants' right of free speech in accordance with the First and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Constitution of the Commonwealth of Pennsylvania. Defendants aver thus, that the strike and the picketing in which they are engaged cannot be enjoined for such injunction would violate the above-mentioned constitutional provisions" (R. 46a).

The same averment was made in the amended answer filed on February 23, 1954 (R. 52a-69a at 60a and 61a).

The Chancellor found that the picketing was "lawful organizational and grievance picketing" (R. 465a). He found that its purpose was not to coerce the employer to compel its employees to join the Union (R. 459a), but that the picketing was for the lawful and proper purpose of continuing an organizational campaign and protesting the employer's unfair labor practices. In his opinion he declared that "picketing for the purpose of peacefully persuading non-union employees of an establishment to join the union is constitutionally protected and cannot be enjoined. * * *" (R. 464a-465a). Consequently, he issued a Decree Nisi dismissing the bill (R. 472a).

Upon Exceptions to the Chancellor's Adjudication, the Findings and Conclusions of the Chancellor were adopted by the court en banc, which issued a Final Decree dismissing the Complaint (R. 487a).

From this Decree an appeal was taken to the Supreme Court of Pennsylvania. The principal contention of the Union both in its brief and in oral argument was that the lower court was correct in refusing to enjoin the picketing be-

cause it was for organizational and grievance purposes, and picketing for organizational and grievance purposes is constitutionally protected as an exercise of the right of free speech. The Supreme Court conceded in its opinion that "picketing which is conducted solely in order to persuade non-union employees of an establishment to join the union is constitutionally protected and cannot be enjoined. * * *" *Sansom House Enterprises v. Local 301, AFL*, 382 Pa. 476, 481 (App. 22). However, the Court proceeded to ignore the findings of the court below and found instead that the purpose of the picketing was to force the employer into establishing a closed union shop. It reversed the decree of the lower court and remanded the record to the court below with direction to grant the injunction prayed for. The Union now petitions this Court for a writ of certiorari to review this judgment of the Supreme Court of Pennsylvania.

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Pennsylvania erred:

1. In directing the issuance of an injunction against peaceful picketing despite the findings of the Chancellor that such picketing was for a lawful organizational purpose and despite the abundant evidence in the Record to support such findings.

2. In attributing to peaceful picketing of a clearly organizational nature an illegal coercive purpose not supported by the Record.

3. In depriving peaceful organizational picketing of the constitutional protection of the Fourteenth Amendment by making "insubstantial findings of fact screening reality."

REASONS FOR GRANTING THE WRIT.

1. In directing the issuance of an injunction against peaceful organizational and grievance picketing the Supreme Court of Pennsylvania contravened a long line of decisions by this Court. It is now well settled that peaceful picketing is constitutionally protected as an exercise of the right of free speech provided it is not carried on for an illegal purpose. *Thornhill v. Alabama*, 310 U. S. 88 (1940); *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287 (1941); *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490 (1949). Picketing for organizational purposes has always been held to be lawful and hence to be constitutionally protected. *American Federation of Labor v. Swing*, 312 U. S. 321 (1941); *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769 (1942); *Cafeteria Employees Union v. Angelos*, 320 U. S. 293 (1943).

In the instant case we have a clear example of organizational picketing. The whole controversy between the Union and the Sansom House grew out of an attempt to organize the employees of the restaurant. The very first pleadings in this case established the fact that prior to the beginning of the picketing in question the Union was engaged in an organizational campaign at the Sansom House (R. 5a, 40a). The Union had already persuaded some of the employees to join its ranks and was attempting to persuade more (R. 5a, 40a). At this point the respondent committed the unfair labor practices described in the Statement of the Case and discharged the employee Mary Jane Greenwood. It has always been the Union's contention that the employer's admitted unfair labor practices and its discharge of this employee provided the impetus for the picketing in question (R. 222a, 223a, 237a).

The Chancellor upheld the position of the Union. He stated in his opinion that "the evidence indicates that this

picketing is being carried on for the purpose of organization or the joint purpose of organization, and protesting unfair labor practices" (R. 466a-467a). He found that the picketing was "lawful organizational and grievance picketing" (R. 465a) and that no illegal coercive purpose could be attached to it (R. 459a). These findings were approved by the lower court en banc (R. 487a). These findings are abundantly supported by the Record and consequently should have been sustained by the Supreme Court of Pennsylvania. It is well established law in Pennsylvania that:

> "Findings of a chancellor affirmed by the court en banc will be disturbed on the appeal only when not supported by the evidence or where arbitrarily or capriciously made." *Payne v. Winters*, 366 Pa. 299, 301 (1951).

See also *Brinton v. Davidson*, 308 Pa. 371 (1932); *Hern v. Bard, et al.*, 355 Pa. 578, 583 (1947).

Examination of the Record with respect to the purpose of the picketing discloses among other things the following testimony by Mr. Turchi, the President and Business Agent of Local 301:

> "Q. Mr. Turchi, what was the line put on for?
> A. The line was put around the Sansom House because Mr. Blum engaged in unfair labor practices and discharged Mary Jane Greenwood, because she was spear-heading the drive and trying to get the other people in the place to sign up, declaring our union as representing them.
> Q. Were there any other reasons besides that?
> A. And for organizational purposes" (R. 222a).

Again

> "Q. Are you doing organizational picketing now?
> A. Yes.
> Q. Were you doing organizational picketing on March 14th, or whenever the strike was, or March 26th?

A. Yes, plus the protest of the discharge.
Q. And you have been doing it ever since?
A. Ever since" (R. 237a).

See also R. 248a, 249a, 250a.

Early in the course of the strike the Union distributed two leaflets giving its account of the true facts behind the controversy. These leaflets were admitted into evidence as Plaintiff's Exhibit Nos. 2 and 3 (R. 414a-422a). They constantly emphasize the organizational nature of the picketing in question:

> "The Local Joint Executive Board of the Hotel and Restaurant Employees and Bartenders International Union of America, AFL, comprising the Waiters and Waitresses Union; Cooks, Chefs, and Pastry Cooks; and Bartenders Unions, undertook an organizational drive amongst the waiters and waitresses, cooks and bartenders employed in the Sansom House.
>
> "The purpose for the organization drive was an attempt on the part of the above named Unions to have Mr. Blum, the proprietor of the Sansom House, pay the prevailing wages that are in effect in other restaurants in the surrounding area and in Philadelphia * * *
>
> "During the process of this organization drive Mr. Blum, the proprietor of the Sansom House, fired Mary Jane Greenwood, for signing a Union card or retaliated against her for Union activity, which is contrary to the State Labor Relations Act. The Act provides that employees may join any labor organization of their own choosing without fear of retaliation on the part of the employer.
>
> "The Waiters and Waitresses Union called upon Mr. Blum and requested that Mary Jane Greenwood be reinstated to her job. Whereupon Mr. Blum refused and that refusal precipitated our Union's withdrawing those other employees of the Sansom House, who, too, had signed Union application cards, and established a picket line at the Sansom House. * * *

"The Unions involved in this strike had no alternative other than to institute their economic sanction, which is the picket line, in order to protect those employees who had signed application cards to better their wages, working conditions, and above all, their job protection or job security" (R. 414a-415a).

The Supreme Court of Pennsylvania was in manifest error in ignoring the findings of the trial court with respect to the lawful organizational purpose of the picketing since these findings had the overwhelming support of the Record and in making instead findings of an illegal purpose which cannot be substantiated by the Record.

2. The Supreme Court was in error in attributing to the picketing an illegal coercive purpose which is not substantiated by the Record. The Supreme Court referred to Blum's version of his conversation with Turchi in support of its position. See *Sansom House Enterprises, Inc., v. Waiters and Waitresses Union, Local 301 AFL*, 382 Pa. 476, 481-482 (App. 23). According to Blum, Turchi threatened to picket until the restaurant had to close down in order to teach Blum respect for Turchi (R. 191a).

The Union's witnesses categorically denied that any such threats were made by Turchi (R. 22a, 273a). On the contrary, they testified that Turchi requested a discussion of the discharged employee's case, whereupon Blum raised his voice, used obscene language toward Turchi and threatened to have him thrown bodily out of the restaurant (R. 221a, 271a).

The contention that the primary purpose of the picketing was to avenge Turchi's private dispute with Blum by coercing Blum into compelling his employees to join the Union further breaks down upon consideration of the testimony of two of the employer's witnesses on cross-examination. Charles S. Hasse, the president of the Sansom House Enterprises, Inc., admitted that the Union never claimed to repre-

sent a majority of his employees, never approached the Sansom House to discuss employment terms, never made any demand of any kind concerning employment conditions and never asked the employer to sign a contract with it (R. 181a-182a).

Mr. Blum himself testified on cross-examination that he believed that the reason for the picketing was his refusal to reinstate Mary Greenwood, the discharged employee (R. 206a-208a). All the above testimony, and more, was fully and fairly considered and evaluated by the Chancellor before he arrived at his crucial decision as to the purpose of the picketing. That decision was that the picketing was *not* for the purpose of compelling the employer to coerce its employees to join the Union but was, as the Union has always maintained, to aid in organizing the non-union employees of Sansom House and to protest the anti-organizational acts of the employer (R. 459a, 464a-467a).

The Chancellor did not make a determination as to the credibility of the conflicting accounts of the meeting between Blum and Turchi. He did not find it necessary to do so, because even if he had found Blum's account the more credible, he could not have found for the employer on the issue of coercion. Even if everything Blum said was taken to be true, still his testimony would not have been nearly sufficient to establish factual or legal coercion. This the Chancellor said at p. 464a of the Record:

> "Even if the plaintiff's version of the conversation is accepted, the court is of the opinion that the defendants' threats, made during a heated argument, do not adequately prove the illegal purpose of the picketing. Plaintiff has the burden of establishing a purpose to coerce it. Its evidence runs thin in light of the circumstances of this case."

The lower court was of the opinion "that even if the plaintiff's version of what was said in the crucial conversation between Blum and Turchi is accepted, there is insufficient evidence of the alleged unlawful purpose of the picketing":

"The real question is the sufficiency of the evidence to prove coercion. The charge is clearly made out when a union approaches an employer with a written contract demanding under threat of picketing that only union members be employed. The element of coercion becomes less clear when, as here, it is allegedly embodied in an oral conversation between a union leader and an employer. In addition, the atmosphere here was one of anger and excitement. Even if we take plaintiff's version of the conversation, the threats which Turchi did make lose much of their importance in view of the interference of the employer, and of Blum in particular, with the union's organizing campaign. The plaintiff's argument that one purpose of the picketing is to avenge Turchi's private dispute with Blum breaks before these prevailing conditions" (R. 466a).

Cf. National Labor Relations Board v. Deena Artware, 198 F. 2d 645 (6th Cir. 1952), where a similar contention that a strike was called because of personal anger on the part of the union negotiator was made and rejected in light of all the surrounding circumstances, which included anti-organizational unfair labor practices similar to those in the instant case.

The Supreme Court of Pennsylvania set forth (App. 23, 24) other factors which led it to conclude that the picketing in question was directed at the employer. The Court stated that it relied upon the number of pickets, their movements, their language and statements. In the first place, all of this conduct occurred more than six months prior to the filing of the Complaint (410a). Secondly, as the Court admits, these actions were more or less sporadic. See App. 24.

All of this conduct was carefully considered by the learned Chancellor, who specifically found that the activities later relied upon by the Supreme Court of Pennsylvania to establish that the picketing was directed against the employer were so sporadic in nature and occurred so long prior to

the filing of the Complaint that they did not affect the current nature of the picketing or establish a current abuse of picketing upon which to base an injunction:

> "It is our conclusion that the plaintiff has also failed to prove that the picketing has been conducted in an unlawful manner. At the most, the many witnesses produced by the plaintiff demonstrated that at the time of the strike and for a few weeks thereafter there were several occasions when vulgar remarks were directed at non-stiking employees and prospective customers as they passed in and out of the Sansom House. There was no testimony that any customers or employees were prevented from entering or leaving the restaurant either by violence or threats of violence. *Since that time there have been only sporadic instances of name-calling and crowding the doorways so as to make passage difficult but not impossible. With very few exceptions all of this behavior occurred more than six months ago. At the time of the hearing, there was no violence or threats of violence.*" Nor is the past behaviour of the picketers such as to create a present atmosphere of impending violence. Hence there is no current abuse of picketing upon which an injunction may be grounded." (Emphasis supplied.) (R. 468a-469a).

The Supreme Court of Pennsylvania also emphasized in support of its conclusion that the picketing was designed to coerce the employer the fact that the pickets by placard, leaflet, and word of mouth appealed to the public not to patronize the restaurant. There is, however, nothing ipso facto illegal about organizational picketing which attempts to enlist the support of the public simultaneously with its efforts to reach the non-union employees.

That genuine and legitimate efforts were made to reach the non-union employees cannot be doubted. One of the employees testified that he was asked by a picket to respect the picket line and not to go inside Sansom House (R. 407a).

Another employee testified that pickets "kept pestering me to join the Union" (R. 330a). The fact that the picket line was most active at peak business hours does not disprove its organizational purpose. At whatever time the picketing was conducted it was obviously successful in enabling the pickets to come into very frequent contact with the employees they were seeking to organize. Numerous employee-witnesses testified directly to the fact that they repeatedly crossed the picket line in order to go to work or leave work or during the course of their employment at Sansom House (e. g., R. 301a, 339a, 407a).

Picketing does not become illegal because it attempts to combine an appeal to the general public with its appeal to non-union employees nor because its appeal to the public is successful and results in economic hardship to the employer.[2] This was the exact holding of the Virginia Supreme Court of Appeals in the case of *Painters and Paperhangers Local Union, 1018 v. Rountree,* 194 Va. 148, 72 S. E. 2nd 402 (1952). In that case, the Court upheld organizational picketing and said:

> "The purpose of the picketing avowed in the Answer and in the motion to dissolve was to unionize the non-union painting contractor and his employees. The evidence does not disclose a different purpose. The charge that there was a purpose to compel the painters to join the union as a condition of their continued employment is not established by the evidence. No such demand or even suggestion was made by the defendants to the complainants, to the contractor or to his men. *If the peaceful publication of the facts in an effort to unionize the painters resulted in economic pressure on the complainants, as employers of the painters, that result did not make the purpose unlawful or the picketing*

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[2] The Supreme Court of Pennsylvania seemed much concerned in the instant case with the substantial drop in the employer's business allegedly caused by the picketing. See App. 24.

illegal. It cannot be said that picketing otherwise legal becomes illegal because of the possibility that as a result of it a person affected by it may do an unlawful act, unless the purpose of the picketing is to compel the doing of such an act." (Emphasis supplied.)

The *Rountree* case was cited with approval by the Supreme Court of the United States in *Local Union No. 10, AFL, v. Graham*, 345 U. S. 192, 73 S. Ct. 585 (1953).

Thus it appears that the factors relied upon by the Supreme Court of Pennsylvania to enjoin the picketing in question do not establish the slightest basis for finding that the purpose of the picketing was other than to organize the employees of the Sansom House. On the contrary the evidence in the Record overwhelmingly and without contradiction establishes the organizational purpose of the picketing.

3. The Supreme Court of Pennsylvania in the instant case merely paid lip service to the doctrine that peaceful picketing for a lawful objective is entitled to the constitutional protection accorded freedom of speech. It admitted the existence of such a doctrine. See App. 22. It was careful to follow the letter of the law. According to its opinion it did not enjoin peaceful picketing for the lawful objective of organizing non-union employees. Instead it enjoined peaceful picketing for the unlawful objective of coercing an employer to force his employees to join the union.

But on what basis did the Supreme Court of Pennsylvania make such a crucial finding? It did not base its decision on the findings of the Chancellor. On the contrary, it ignored the findings of the trier of fact because they went the other way. It ignored the fact that these findings were adopted and affirmed by the trial court en banc. It did not really base its conclusion on the Record either, although it attempted to find evidence in the Record to justify its decision. The evidence on which it purported to rely was either

of dubious factual validity or of no legal relevance to the issue at hand and was insufficient in law to support the conclusion of the Court. If it had based its decision on the Record, it could hardly have taken any other course than to affirm the findings of the lower court, for these findings were supported by an abundant and solid body of uncontradicted evidence.

What the Supreme Court of Pennsylvania has done then in the instant case, for all practical purposes, is to enjoin peaceful organizational picketing while labeling it something else. In so doing, it has made a mockery of the constitutional protection accorded peaceful picketing ever since the *Thornhill* case. Fortunately, constitutional guarantees cannot be evaded so easily. This Court has always been vigilant of its duty to enforce constitutional liberties even when denied through spurious findings of fact in a state court:

> "* * * it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this court has the ultimate power to search the record in the state courts where a claim of constitutionality is effectively made." *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 293. Cf. also *Chambers v. Florida*, 309 U. S. 228.

The members of this Court have always been alert to the danger of accepting the word of a state court at face value. Said Mr. Justice Black dissenting at page 302 of *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287:

> "* * * in solemnly adjudicating the validity of state action touching these cherished privileges (guaranteed by the First Amendment), we cannot look merely at the surface of things, for were we to do so these constitutional guaranties would become barren and sterile. We must look beneath the surface and must carefully

examine each step in proceedings which lead a court to enjoin peaceful discussion."

We implore this Court to exercise its vigilance on behalf of the cherished privilege of freedom of speech. Else we may one day soon find that peaceful picketing while nominally "within that area of free discussion that is guaranteed by the Constitution" has been stripped of all its hard-won constitutional protection by courts free to disregard its true nature and free to attribute to it an illegal purpose on the basis of "insubstantial findings of fact screening reality."

CONCLUSION.

It is respectfully submitted that for the foregoing reasons it is important that this petition for a writ of certiorari be granted and that the order entered by the Supreme Court of Pennsylvania on June 27, 1955, be reversed.

CHARLES A. ROTHMAN,
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Counsel for Petitioners

APPENDIX.

SANSOM HOUSE ENTERPRISES, INC., APPELLANT v. WAITERS & WAITRESSES UNION, LOCAL 301, AFL.

(382 Pa. 476, 1955.)

Argued April 20, 1955.

Before: STERN, C. J., STEARNE, JONES, BELL, CHIDSEY, MUSMANNO and ARNOLD, J. J.

Appeal, No. 139, Jan. T., 1955, from decree of Court of Common Pleas No. 1 of Philadelphia County, Sept. T., 1953, No. 7852, in case of Sansom House Enterprises, Inc., et al. v. Waiters & Waitresses Union, Local 301, AFL, et al. Decree reversed; reargument refused July 26, 1955.

Equity. Before FLOOD, J.

Adjudication filed finding for defendants and refusing to enjoin picketing; exceptions to adjudication dismissed and final decree entered dismissing complaint and entering order for counsel fee and costs. Plaintiffs appealed.

I. HERBERT ROTHENBERG, with him LEMISCH & GINSBURG, for appellants.

RICHARD H. MARKOWITZ, with him LOUIS H. WILDERMAN, for appellees.

Opinion by MR. CHIEF JUSTICE HORACE STERN, June 27, 1955:

The question is whether the court below erred in refusing to enjoin the picketing of plaintiff's establishment by a labor union.

Plaintiff is a corporation which conducts several restaurants, one of which is located at 1302-04 Sansom Street, extending through to 1305-07 Walnut Street, in the City of Philadelphia. It employs some 90 persons. The Waiters & Waitresses Union, Local 301, A.F.L., commenced a campaign to organize plaintiff's employes and become their collective bargaining agent. Plaintiff allegedly tried to interfere with the rights of the employes to effect such organization and also discharged an employe, one Mary Greenwood, because, as the Union claimed, of her activities in its campaign. The Union filed charges with the State Labor Relations Board in regard to both those matters.

On March 26, 1952, the President of the Union, Ray Turchi, visited the restaurant and there engaged in an altercation with plaintiff's secretary and treasurer, Jacob Blum. Blum's version of the conversation was that Turchi said that Blum would be glad to put plaintiff's employes in the Union when he got through with him, that even if it took him 10 to 20 years he would picket and ruin plaintiff's restaurant, and that, when he got through, there would not be any Sansom House. Turchi denied this in part and claimed that Blum ordered him out and refused to discuss with him the question of reinstating Mrs. Greenwood. Be that as it may, the fact is that a whistle was then blown and the employes were called out on strike; some 13 of them responded and left the premises. The picketing by the Union thereupon began and has continued ever since, a period of over three years.

Acting on the complaint filed by the Union, the State Labor Relations Board entered a decree ordering plaintiff to cease and desist from interfering with its employes in the exercise of their rights to self-organization and collective

bargaining, and from discriminating against its employes in regard to tenure of employment because of their union membership and activities. It ordered plaintiff to reinstate Mrs. Greenwood with back pay, and also to reinstate the employes who had gone out on strike. Plaintiff appealed from this order to the Court of Common Pleas and meanwhile, on October 13, 1952, offered unconditionally to reinstate Mrs. Greenwood, but the offer was not accepted either by her or the Union; none of the employes on strike requested reinstatement although plaintiff was willing at all times to comply with the order of the Board in that respect. The Court of Common Pleas found that Mrs. Greenwood had not been discharged because of her union activities and therefore reversed the order of the Board as to her case; this decision was affirmed on appeal to this Court (*Pennsylvania Labor Relations Board v. Sansom House Enterprises, Inc.*, 378 Pa. 385, 106 A. 2d 404). As to the Board's order to cease and desist from interfering with the rights of the employes to self-organization and collective bargaining, plaintiff, on October 8, 1953, filed with the Board an affidavit of compliance and duly posted the order of the Board as modified by the decision of the court. Nevertheless the picketing went on as before.

The present action in equity to enjoin the picketing was brought on December 2, 1953, by plaintiff, together with 70 of its employes, against the Union and its officers. Hearing having been had, the court concluded that plaintiff was not entitled to equitable relief against the defendants and dismissed the bill. Plaintiff appeals from that decision.

There is no question but that, where picketing is for an unlawful purpose, it is no longer protected as an exercise of the right of free speech and may properly be enjoined: *Wilbank v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union*, 360 Pa. 48, 60 A. 2d 21; *Phillips v. United Brotherhood of Carpenters and Joiners of America*, 362 Pa. 78, 66 A. 2d 227; *Wortex Mills Inc. v. Textile Workers Union of America C.I.O.*, 369 Pa.

359, 85 A. 2d 851; *Baderak v. Building and Construction Trades Council*, 380 Pa. 477, 112 A. 2d 170. It therefore becomes necessary to consider the avowed purposes of the picketing in the present case.

The first of these is that the picketing was intended as a protest against the discharge of Mrs. Greenwood. As already stated, however, that protest has now no valid basis in view of the court's determination that her dismissal was not improper.

The second alleged reason for the picketing is that it was commenced because of plaintiff's interference with the rights of the employes to organize and bargain collectively. But the order made by the Pennsylvania Labor Relations Board in that matter was complied with more than a year and a half ago, thereby leaving no further ground for complaint in regard to it. It need scarcely be said that continuation of the picketing subsequent to that time cannot be justified as an act of retaliation or as punishment for whatever sin plaintiff may originally have committed.

So much for the two asserted reasons for the picketing thus discussed. Plaintiff several times called upon defendants to state whether they had any other grievances or demands which they wished to present and which, if there were any, it would be glad to discuss with them, but defendants have not complied with this request.

We come, then, to the objective upon which defendants principally rely for continuing to carry on the picketing, namely, to organize plaintiff's employes and induce them to join the Union. Such a purpose would undoubtedly be a legal and proper one because picketing which is conducted solely in order to persuade non-union employes of an establishment to join the union is constitutionally protected and cannot be enjoined: *Pappas v. Local Joint Executive Board*, 374 Pa. 34, 96 A. 2d 915; *Wilkes Sportswear, Inc. v. International Ladies' Garment Worker's Union*, 380 Pa. 154, 110 A. 2d 418. Plaintiff, however, contends that the picketing is really designed to force it to compel or require its

employes to join the Union, and that the Union is engaged in a course of conduct intended or calculated to accomplish such coercion. Such picketing would be illegal and can and should be enjoined: Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, section 4, as amended by the Act of June 9, 1939, P. L. 302; *Wilbank v. Chester & Delaware Counties Bartenders, Hotel & Restaurant Employees Union*, 360 Pa. 48, 60 A. 2d 21; *Phillips v. United Brotherhood of Carpenters and Joiners of America*, 362 Pa. 78, 66 A. 2d 227; *Baderak v. Building & Construction Trades Council*, 380 Pa. 477, 112 A. 2d 170. The court below found that the picketing was not for that purpose, but such a finding is merely an inference or deduction from the testimony and is therefore reviewable by this court: *Brooks v. Conston*, 356 Pa. 69, 51 A. 2d 684; *Crew v. Gallagher*, 358 Pa. 541, 58 A. 2d 179; *Heilig Bros. Co., Inc. v. Kohler*, 366 Pa. 72, 76 A. 2d 613. It is a finding with which we cannot agree because, in our opinion, the evidence speaks overwhelmingly to the contrary.

It is unfortunate that the learned chancellor did not make a finding of fact in regard to the conversation between Turchi and Blum, for certainly, if Blum's version of what occurred is the correct one, it would go far toward proving that the real purpose of the picketing was to force plaintiff into establishing a closed union shop. Apart, however, from anything that Turchi may have said on that occasion, the actions of the pickets themselves speak louder than words and leave no room for doubt as to that question. The uncontradicted evidence is that there were sometimes as many, as 18 or 20 of them on the Sansom Street entrance of the property and at least 6 or 8 on the Walnut Street entrance; that they moved in formations and jostled pedestrians and prospective customers from the sidewalk; that they blocked the entrances so as to make ingress and egress difficult; that they carried placards announcing that the employes were on strike and containing the legend: "We earnestly request our friends and sympathizers not to patronize;" that they threw leaflets into the restaurant urging

the public to support them by not patronizing Sansom House Enterprises; that they requested people not to enter the restaurant and sometimes even tried to prevent them from doing so; that they told them the food was no good, that it was rotten, that it was poisonous, and that the service was "lousy"; that they shouted vile language into the restaurant and spat into the entry way; that they interfered with the delivery of supplies, making it necessary for plaintiff to bring in food by its own truck; that they carried on their picketing only at peak hours when business activities were at their height and customers most accessible instead of appealing to the employes when they could have been better contacted during more quiet periods; that, while they occasionally hurled profane language at the employes, they apparently made no serious attempt to communicate with them in order to discuss the question of their joining the Union. While some of these actions were more or less sporadic they were, cumulatively, amply sufficient to establish a pattern that showed they were aimed at the employer, not at the employes. Defendants contend that they did not make any demand upon plaintiff to enter into a union agreement, but it was said in *Baderak v. Building and Construction Trades Council*, 380 Pa. 477, 483, 112 A. 2d 170, 173: "Appellants * * * take the position that, in order to show such primary or paramount purpose [of the picketing], there must be in effect a specific demand upon the employer by the union for recognition, and picketing because of a refusal by the employer. It is true that, in such a case, the inference of unlawful purpose is readily made. However, even in the absence of a direct demand upon the employer by the union, the purpose of the picketing may, nevertheless, be just as clear." And in that case it was found, on facts quite similar to those here present, that the purpose of the picketing was clearly that of coercing the employer. The effort of defendants in the present case to "break" plaintiff has been so remorselessly pressed that, according to its testimony, it has suffered an annual drop in receipts in its business from about $700,000 to $350,000.

The court below was of opinion that plaintiff did not come into equity with clean hands because of its having interfered with the organizational activities of the Union previous to March 26, 1952, when the picketing began. As already stated, however, plaintiff had admittedly undone any wrongs it may have committed years before and had "washed its hands" before the present action was instituted; it cannot therefore be barred on any such ground from obtaining equitable relief.

Being of opinion, for the reasons stated, that defendants' picketing has long been, and still is, illegal, it becomes unnecessary to consider the question whether, even if its sole purpose were to organize plaintiff's employes, it should be allowed to continue indefinitely, more than three years having now gone by since its inception without its having succeeded during that time in gaining the adherence of the employes.

The decree is reversed and the record remanded to the court below with direction to grant the injunction prayed for; each of the parties to bear its own costs.

DISSENTING OPINION BY MR. JUSTICE MUSMANNO.

The record in this case covers some 450 pages. The Chancellor who saw and heard the witnesses made the following Findings of Fact: "1. Defendants' picketing is not for the purpose of coercing the plaintiff corporation to compel its employees to join the defendant unions. 2. The picketing by the defendants or members of the defendant unions was not accompanied by such violence or threats of violence as to warrant injunctive relief. 3. None of the defendants used force or threatened force such as would or did coerce the individual plaintiffs to join the defendant unions nor was any such force or threat of force used as would intimidate a person of average firmness. 4. The plaintiff corporation,

because of its original interference with defendants' efforts to organize the employees does not come into court with clean hands."

These findings were confirmed by the Court en banc. The situation at the Sansom House has been unquestionably a distressing one, but I believe that the Majority in describing it in the Majority Opinion has painted a picture that goes beyond the frame of the testimony. For instance, the Majority says: "The *uncontradicted* evidence is that there were sometimes as many as 18 or 20 of them [pickets] on the Sansom Street entrance of the property and at least 6 or 8 on the Walnut Street entrance." But some of this testimony *has* been contradicted by plaintiff witnesses themselves. Eugene M. Martin, a customer of the Sansom restaurant, testified: "Q. Where was the picket line with respect to the entrance of the restaurant? A. Well, it was in *front of the entrance on Sansom.* They were walking back and forth. Q. Do you now recall approximately how many pickets were in the line? A. That would be hard to say. I mean I would say maybe *five* or *six* anyhow."*

Harry Webster, an employe at Sansom House, testified: "Q. Where did you see the pickets, on what street were they? A. Sansom Street side, right at the door as I go out. Right on the Sansom Street side as I go out the door. Take about two steps out of the door and they would be parading up and down. Q. What time do you come to work? A. I come in at noon. Q. Are the pickets there when you come in? A. Sometimes they are, *sometimes they aren't.* Q. *So you don't see them there every day?* A. *No, I don't.*"

Edward Koziol, another employe, testified: "Q. Did they picket every day or only intermittently? A. Well, they picket almost every day, as far as I have noticed. In the afternoons I don't see them around * * *. Q. Regularly? A. I would say pretty regularly; *only Walnut Street, at times I don't see pickets there,* but Sansom Street always. I manage to be on both sides and I do observe."

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* Italics throughout, mine.

This same witness testified that the pickets never molested the employes in any way: "Q. Did you see or hear the pickets, or any one on the picket line, do or say anything untoward to the help? A. No, I haven't myself." Further: "Q. Do you have any difficulty in getting through the picket line? A. No, I haven't. Q. Was anything ever said to you? A. *Nothing, absolutely nothing.*"

Myrtle Hess, a waitress employed at the Sansom House for seven and a half years, testified: "Q. You have been employed continuously from the time of the strike to the present, haven't you? A. Yes, sir. Q. And you are still employed there? A. Yes, sir. Q. And you wish, of course, to continue working? A. Yes, sir. Q. Have you had any experience with the pickets or anyone on the picket line? A. *No, the picket line hasn't bothered me one bit.*"

The Majority has referred to derogatory utterances made against the plaintiff's restaurant but the record shows that some of these denunciations occurred at union meetings and not at the restaurant.

As recently as 1951, this Court said in *Payne v. Winters*, 366 Pa. 299, 301: "Findings of a chancellor affirmed by the court en banc will be disturbed on the appeal only when not supported by the evidence or where arbitrarily or capriciously made."

It is not evident that the learned and experienced Chancellor in the Court below made arbitrary or capricious findings.